

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BRIAN N. DRAKE,)	
Petitioner,)	The Honorable Robert E. Keeton
)	
v.)	Case No. 04-11426 REK
)	
UBS FINANCIAL SERVICES INC.,)	
Respondent.)	

**RESPONDENT'S CROSS-MOTION FOR
CONFIRMATION OF NASD ARBITRATION AWARD**

Respondent UBS Financial Services Inc. ("UBS"), by its attorneys, hereby submits its Cross-Motion for Confirmation of NASD Arbitration Award. In support of its Motion, UBS states as follows:

Introduction

1. This is an action to confirm an NASD arbitration award wherein the panel ordered Respondent Brian N. Drake ("Drake"), a former UBS employee in Hyannis, Massachusetts, to pay UBS the sum of \$215,994.27 on UBS's claim for repayment of the outstanding balance on two promissory notes executed by Drake in connection with his employment by UBS, including attorneys fees, costs and interest.

Parties, Jurisdiction and Venue

2. UBS is a Delaware corporation with its principal place of business in the State of New York. UBS transacts business in this judicial district from offices in Boston, Massachusetts. UBS is a securities broker-dealer and commodities futures commission merchant that provides a wide range of financial services to its clients. UBS provides services to its clients through its financial advisors, who work from UBS offices throughout the country.

3. Upon information and belief, Drake is a citizen of the State of Massachusetts.

4. The Court has jurisdiction over this action pursuant to 28 U.S.C. §1332(a), in that UBS and Drake are citizens of different States and the amount exceeds the sum or value of \$75,000, exclusive of interest and costs.

5. Venue is proper in this District pursuant to 28 U.S.C. §1391(a) in that a substantial part of the events or omissions giving rise to UBS's claim occurred in this District and Respondent resides in this District. Venue is also proper in this District pursuant to 9 U.S.C. §9 in that the Award was made within this District.

Facts

6. On or about February 6, 2003, UBS filed with the NASD its Statement of Claim, captioned UBS Financial Services Inc. v. Brian N. Drake, NASD Case No. 03-00933 (the "NASD Action"). In its Statement of Claim, UBS asserted claims against Drake for breach of a promissory note that Drake had signed in connection with his employment by UBS. UBS requested repayment of the outstanding note balance of \$156,824.49, plus interest, attorneys' fees and costs.

7. On or about March 13, 2003, Drake filed his Statement of Answer. Drake filed an Amended Statement of Answer on or about March 5, 2004. Drake did not dispute the authority of the NASD arbitration panel to decide the matter in either of his Statements of Answer.

8. On April 6 and 7, 2004, a three-person panel of NASD arbitrators conducted a full evidentiary hearing on UBS's claims, Drake's defenses and UBS's responses to Drake's defenses.

9. On May 5, 2004, the NASD served the Award (the "Award") of the arbitration panel on the parties. A true and correct copy of the Award is attached as Exhibit A. In the Award, the NASD arbitration panel ordered Drake to pay all of the damages, attorneys' fees, interest and costs that UBS requested.

Claim For Relief

I. UBS Is Entitled To An Order Confirming The Award Pursuant To Section 9 Of The Federal Arbitration Act.

10. Section 9 of the Federal Arbitration Act (the “FAA”), 9 U.S.C. §9, permits a party to apply to the United States court in and for the district within which an arbitration award is made for an order confirming the award at any time within one year after the award is made. 9 U.S.C. §9. Upon receiving such an application, “the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11” of the FAA. *Id.*

11. The 1st Circuit Court of Appeals has repeatedly held that “judicial review of an arbitration award is among the narrowest known to the law.” *Maine Cent. R.R. Co. v. Brotherhood of Maintenance of Way Employees*, 873 F.2d 425, 428 (1st Cir. 1989). *See also Coastal Oil of New England v. Teamsters Local*, 134 F.3d 466, 469 (1st Cir. 1998). Accordingly, “[f]ederal court review of arbitral decisions is extremely narrow and extraordinarily deferential.” *Service Employees Int’l Union v. Local 1199*, N.E., 70 F.3d 647, 651 (1st Cir. 1995); *Coastal Oil*, 134 F.3d at 469.

12. An award must be confirmed unless it is vacated on one or more of the four extremely limited statutory grounds set forth in the FAA. *See* 9 U.S.C. §10; *Bull HN Information Systems, Inc. v. Hutson*, 229 F.3d 321, 331 (1st Cir. 2000); *Wonderland Greyhound Park v. Autotote Systems, Inc.*, 274 F.3d 34, 35 (1st Cir. 2001). The burden is on the party requesting vacatur of the award to prove one of these four bases. *See* 9 U.S.C. §10.

13. Here, UBS has timely filed its application for confirmation of the Award. As there are no grounds for vacating the Award, UBS is entitled to an order confirming the Award.

Conclusion

Wherefore, for all of the reasons set forth above, Respondent UBS Financial Services Inc. respectfully requests as follows:

A. That the Court enter an Order, pursuant to 9 U.S.C. §9, granting UBS's Cross-Motion for Confirmation of NASD Arbitration Award and confirming the Award of the NASD arbitration panel in the arbitration proceeding captioned, UBS Financial Services Inc. v. Brian N. Drake, NASD Case No. 03-00933, filed on or about February 6, 2003; and

B. Granting UBS such additional or other relief as may be just and equitable.

UBS FINANCIAL SERVICES INC.

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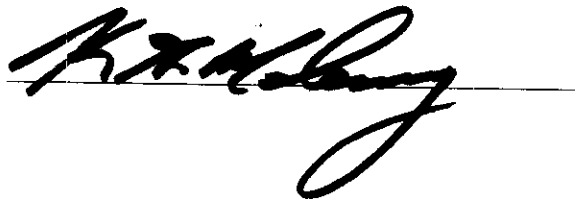
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Certificate Of Service

The undersigned attorney hereby certifies that on January 5, 2005, he caused the foregoing UBS's Cross-Motion for Confirmation of NASD Arbitration Award to be served upon:

William A. Jacobson
Shanna L. Pitts
Law Offices of William A. Jacobson, Inc.
850 Turks Head Building
Providence, Rhode Island 02903

by fax and by FedEx next day delivery at 60 State Street, Boston, MA 02109.

A handwritten signature in black ink, appearing to read "W.A. Jacobson", is written over a horizontal line.